

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
CO-36-45

In the Matter of)
)
Citizens Telecommunications Company)
Of North Dakota and U S WEST)
Communications, Inc.)
)
Joint Petition for Waivers of the Definition) AAD-
of "Study Area" Contained in Part 36,)
Appendix--Glossary of the Commission's)
Rules)

EXPEDITED JOINT PETITION FOR WAIVERS

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February 15, 2000

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SUMMARY

U S WEST Communications, Inc. ("U S WEST") has agreed to sell eight of its North Dakota exchanges to Citizens Telecommunications Company of North Dakota ("Citizens"). These eight exchanges collectively serve approximately 17,000 access lines. By this Expedited Joint Petition for Waivers ("Petition"), U S WEST seeks a waiver to delete these eight exchanges (including the de minimis number of Minnesota access lines served by two of these North Dakota exchanges) from its North Dakota study area.

Citizens seeks a waiver of the study area definition to establish a new study area consisting of the exchanges it is acquiring from U S WEST. Citizens does not presently provide telephone service within the state of North Dakota.

U S WEST and Citizens respectfully request that the Federal Communications Commission ("Commission") expeditiously review and approve this Petition. This Petition raises no new issues of law, is supported by Commission precedent, and the facts involved in this Petition clearly demonstrate that the public interest will be served by an expeditious grant.

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EXPEDITED JOINT PETITION FOR WAIVERS

I. INTRODUCTION

U S WEST Communications, Inc. ("U S WEST") has agreed to sell eight of its North Dakota exchanges to Citizens Telecommunications Company of North Dakota ("Citizens"). These eight exchanges collectively serve approximately 17,000 access lines. By this Expedited Joint Petition for Waivers ("Petition"), U S WEST seeks a waiver to delete these eight exchanges from its North Dakota study area. Citizens seeks a waiver to establish a new North Dakota study area consisting of the exchanges it is acquiring from U S WEST.

Citizens, a wholly-owned subsidiary of Citizens Utilities Company, is seeking to acquire North Dakota telecommunications property currently owned and operated by U S WEST. Citizens does not presently provide telephone service within the state of North Dakota.

The property being transferred consists of the eight exchanges of Alexander, Fairmount, Gwinner, Lisbon, Pembina, Watford City, Williston and Wyndmere in North Dakota. Also included are approximately 122 access lines served by the Fairmount and Pembina exchanges that are physically located in Minnesota.

The Federal Communications Commission ("Commission") should expeditiously review and approve this Petition. This Petition raises no new issues of law, and the facts involved in this Petition are similar to those involved in similar waiver requests that have been recently approved.¹

II. THE COMMISSION'S STUDY AREA FREEZE SHOULD BE WAIVED

Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984.² This "freeze" was due, in part, to the Commission's concern over the level of interstate cost recovery by local exchange carriers ("LEC") from the Universal Service Fund ("USF"): "[t]he Commission took that action, in part, to ensure that LECs do not set up high cost exchanges within their existing service territories as separate study areas to

¹ See, e.g., In the Matter of Petition for Waivers Filed by Union Telephone Company, Inc. and U S WEST Communications, Inc. Concerning Section 61.41(c)(2) and 69.3(e)(11) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd. 1840 (1997); In the Matter of Petitions for Waivers Filed by Alpine Communications, L.C., Butler-Bremer Mutual Telephone Company, Clarksville Telephone Company, Dumont Telephone Company, Grand River Mutual Telephone Corporation, Heartland Corporation, South Central Communications, Inc., Universal Communications, Inc., and U S WEST Communications, Inc. Concerning Sections 61.41(c)(2), 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd. 2367 (1997).

² See 47 C.F.R. Part 36, Appendix--Glossary.

maximize high cost support.”³ At the same time, the Commission recognized that its rules were not aimed at discouraging “the acquisition of high cost exchanges or the expansion of service to cover high cost areas.”⁴ Indeed, the Commission’s Common Carrier Bureau (“Bureau”) has implemented this policy decision by holding that changes in study areas that “result from the purchase or sale of exchanges in arms-length transactions” “do not conflict” with the concerns prompting the study area freeze.⁵

The Commission has also established a three-prong test for deciding whether study area waivers should be granted. The Commission should approve such waiver requests if it determines:

[F]irst, that the change will not affect adversely the USF support program;

[S]econd, that the state commission having regulatory authority does not object to the change; and

³ In the Matter of U S WEST Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary of the Commission’s Rules and Eagle Telecommunications, Inc. Petition for Waiver of Section 61.41(c) of the Commission’s Rules, Memorandum Opinion and Order, 10 FCC Rcd. 1771, 1773 ¶ 10 (1995) (“Eagle Decision”), citing In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Rules, and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 50 Fed. Reg. 939 (Jan. 8, 1985).

⁴ In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, 48337 ¶ 65 (Dec. 12, 1984).

⁵ In the Matter of Contel of the West Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules, Oregon-Idaho Utilities, Inc., Petition for Waiver of the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules, Memorandum Opinion and Order, 5 FCC Rcd. 4570, 4571 ¶ 9 (1990) (emphasis added).

[F]inally, that the public interest supports grant of the waiver.⁶

As demonstrated herein, the primary concern prompting the “freeze” in study areas is not an issue in this transaction, and the Commission’s three-prong test will be satisfied. Accordingly, U S WEST and Citizens respectfully request that the Commission grant the study area waivers permitting: (1) U S WEST to remove these eight exchanges at issue from its North Dakota study area; and (2) the affiliation of these exchanges within Citizens’ newly established North Dakota study area.

A. The USF Impact Arising From This Transaction

Since carriers purchasing high cost exchanges can only receive the same level of support per line as the seller received prior to the sale, there can, by definition, be no USF impact in these transactions. Citizens will receive the same amount of support as U S WEST currently receives in these eight North Dakota exchanges, so this transaction is a non-event for purposes of the USF.⁷

B. Neither The North Dakota Nor The Minnesota State Commissions Object To The Proposed Change In Study Area Boundaries

On February 9, 2000, the North Dakota Public Service Commission (“North Dakota PSC”) issued a letter notifying the Commission that it recently approved the

⁶ See, Eagle Decision, 10 FCC Rcd. at 1772 ¶ 5 (footnotes omitted).

⁷ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 8942-943 ¶ 308 (1997); aff’d, rev’d and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999);

sale of these eight exchanges. In its letter the North Dakota PSC also stated that it "... has no objection to the removal of the named exchanges from U S WEST's study area and the addition of those exchanges to the appropriate study area(s) of the acquiring company."⁸

On February 11, 2000, the Minnesota Public Utilities Commission issued a letter stating, "[t]he Commission has no objection to the FCC granting study area waivers to [U S WEST] for the Pembina and Fairmount, North Dakota exchanges."⁹

C. The Public Interest Will Be Served By Grant Of
The "Study Area" Waiver Requested Herein

Citizens plans to invest approximately \$10 million in the North Dakota exchanges it is purchasing during the first three years of ownership. While some of this capital investment will be used to perform maintenance, the remainder will be used to upgrade the network to provide enhanced services. Citizens plans to provide broadband/digital subscriber line services in the future when there is sufficient demand to make it possible to provide these services at an affordable cost. The North Dakota PSC also found that Citizens has "... the technical, financial and

pets. for reh'g. and reh'g. en banc denied, Sep. 28, 1999, mandate issued Nov. 2, 1999.

⁸ See Exhibit 1, letter from North Dakota PSC to Katherine Schroder, Federal Communications Commission, dated Feb. 9, 2000.

⁹ See Exhibit 1, letter from Minnesota Public Utilities Commission, dated Feb. 11, 2000.

managerial fitness and ability to provide telecommunications services in the exchanges currently served by U S WEST Communications, Inc.”¹⁰

Citizens has provided a description of the to-be-acquired service areas, as well as its proposed operations and upgrades associated with the to-be-acquired exchanges.¹¹ Moreover, Citizens and U S WEST have fully provided the information associated with their respective portions of the transaction as recommended by the Bureau.¹²

In light of the above, U S WEST and Citizens believe that the public interest would be served by the granting of the study area waivers requested herein.

III. CONCLUSION

For the reasons stated herein, U S WEST and Citizens respectfully request that the Commission expeditiously review and approve this Petition. This Petition raises no new issues of law, is supported by Commission precedent, and the facts involved in this Petition clearly demonstrate that the public interest will be served by such an expeditious grant. U S WEST and Citizens respectfully submit that an expeditious grant of this Petition will serve the public interest by affording the resident and business customers of these rural exchanges the benefits of the planned transfers.

¹⁰ See Exhibit 1, State of North Dakota Public Service Commission, Order, Case No. PU-2173-99-589, dated Jan. 26, 2000.

¹¹ See Attachments A and B.

¹² See, Public Notice, Common Carrier Bureau Establishes Expedited Processing Procedures for Petitioners Seeking Part 36 Study Area Waivers, 10 FCC Rcd. 13228 (1995) (“Study Area Public Notice”). Citizens’ specific information is provided herein as Attachment B.

Respectfully submitted,

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